

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	
)	

COMMENTS OF SATV10 LLC

SATV10 LLC (“SATV10”), licensee of KYVV-TV, Del Rio, TX (Fac. ID No. 55762) (the “Station”), respectfully submits these Comments in response to the *Notice of Proposed Rulemaking* in the above-referenced matter.¹ The Commission’s proposal in the *NPRM* to only protect facilities that were licensed as of February 22, 2012, without regard for the reason why the facility was not licensed or a permit had not been issued, is arbitrary and threatens the substantial investments that many broadcasters have made to upgrade their stations with the expectation that they would be able to continue operating on those facilities as long as they serve the public interest. Through these comments, SATV10 urges the Commission to adopt a flexible approach for stations that had an application for a construction permit on file as of February 22, 2012 and have worked in good faith to construct the proposed facilities.

SATV10 acquired the Station (then operating under the call sign KTRG) from bankrupt Ortiz Broadcasting Corp. on April 30, 2007.² At the time, the Station was authorized to operate its analog TV facilities on channel 10 with 316 kW effective radiated power (“ERP”) and held a

¹ In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Notice of Proposed Rulemaking, 27 FCC Red. 12357 (2012) (“*NPRM*”)

² See BAPLCT-20060120ABR.

construction permit to operate its post-transition digital facility on channel 28 with 1000 kW ERP and 100 meters antenna height above average terrain (“HAAT”)³. On June 18, 2008, SATV10 filed an application to modify the Station’s digital construction permit to specify a new transmitter site, where it would operate with 265 kW ERP on a new tower that could support the proposed DTV antenna, which would be 674 meters HAAT.⁴ As the Station’s engineer acknowledged in the Engineering Statement accompanying the application, the new tower would require approval from the Federal Aviation Administration. On May 12, 2011, SATV10 amended the modification application to correct the ground elevation, resulting in a revised HAAT of 751.6 meters and a reduced operating power of 185 kW ERP to keep the predicted noise limited contour (41 dBu) within the similar contour proposed in the pending application. The FCC issued a license for the original 1000kW ERP facility on September 2, 2011,⁵ and the modification application remains pending.

SATV10 has expended considerable time and expense trying to improve its ability to serve the public through the modification first filed in 2008 and amended in 2011. If SATV10 can provide service from an antenna on the proposed tower, the Station would be able to increase the number of viewers to whom it can deliver free, over-the-air, MundoFox programming from 56,000 to 237,115. Protecting the Station’s ability to serve these additional viewers is particularly important because 33% of homes in which Spanish is the primary language rely exclusively on over-the-air broadcasting.⁶

³ See FCC File No. BPCDT-19991101AEN.

⁴ See FCC File No. BMPCDT-20080618ACC.

⁵ See FCC File No. BLCDT-20110527AKP.

⁶ Press Release, National Association of Broadcasters, *Over-the-air TV Viewership Soars to 54 Million Americans* (June 18, 2012), available at <http://www.nab.org/documents/newsroom/pressRelease.asp?id=2761>.

In the *NPRM*, the Commission proposes to make certain, limited accommodations in the repacking for stations that had applied for facilities that were not yet licensed as of February 22, 2012. However, as proposed, this exemption only extends to “facilities authorized in unbuilt construction permits for new full power television stations as of February 22, 2012,” but not facilities specified in applications for modification of authorized facilities.⁷ As SATV10’s circumstances demonstrate, the agency’s proposals are insufficient to account for the many reasons why a broadcaster may not have been able to license a facility for which it had applied prior to February 22, 2012.

The Commission itself has recognized that it does not have to so limit the protection available to stations that had filed an application for a construction permit prior to February 22, 2012 but, for valid reasons, had not yet obtained a license for those facilities. Thus, in proposing to protect certain Class A facilities that were not licensed as of February 22, 2012, the FCC observed that, “[a]lthough section 6403(b)(2) mandates preservation only of certain facilities,” it does not “prohibit the Commission from granting protection to additional facilities where appropriate.”⁸

The circumstances facing SATV10 represent one such situation where protecting additional facilities not only is appropriate, but is the only fair and just result. SATV10 had no advance warning that it needed to license the modified facility by February 22, 2012 and has expended considerable sums (even after the retroactively imposed cut-off date) trying to perfect its application. The Commission must protect this and similar situations where a licensee filed

⁷ See *NPRM* ¶¶ 113-14.

⁸ *Id.* ¶ 113.

an application for a construction permit before February 22, 2012 and has been working in good faith to construct the facility.

By adopting the flexible approach proposed herein, the Commission will improve the likelihood of conducting a successful incentive auction by ensuring that those broadcasters that have invested substantial time and resources to improve their ability to serve their communities can receive the benefits of their investments.

Respectfully submitted,

SATV10 LLC

By: 

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